

ARTICLE IV: CONDOMINIUM AND COOPERATIVE CONVERSIONS AND RELATED EVICTIONS.

*State law references: Condominiums, G.L. c. 183A; Cooperatives, G.L. c. 157B.

7.61 Condominium/Cooperative Conversion Declaration

Whereas, at present, there is a substantial demand for conversion of rental housing units to homeownership units; and

Whereas, although homeownership constitutes an important and positive dimension in addressing the housing needs of Somerville, absent sufficient new rental housing production, such conversion necessarily reduces the stock of rental housing otherwise available; and

Whereas, a recent study has demonstrated that the vacancy rate in Somerville is less than five percent and that there has been a decrease in Somerville's rental housing stock, while at the same time rents have increased; and

Whereas, people who are elderly, or handicapped or of low and moderate income have particular difficulty in obtaining suitable rental housing within the City at prices they can afford when they are displaced; and

Whereas, unless the available stock of rental housing and the tenants who reside therein, receive further protection from the consequences of conversion of said accommodations to condominium or cooperatives than the law now affords, the rental housing shortage will generate serious threats to the public health, safety, and general welfare of the citizens of Somerville, particularly the elderly, the handicapped, and persons and families of low and moderate income; and

Now therefore, pursuant to the authority vested in the City of Somerville by law, including without limitation, Chapter 37 of the Acts of 1976, as amended by Chapter 218 of the Acts of 1985, and Chapter 527 of the Acts of 1983, as amended, this Article is hereby adopted.

7-62. Short Title.

This Article shall be known and may be cited as the "Somerville Condominium/Cooperative Conversion Ordinance."

7-63. Purpose.

The purpose of this Article is to protect tenants by regulating: (i) the conversion of rental housing to condominiums and cooperatives; and (ii) evictions related thereto.

7-64. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- a. *Board*: The Somerville Condominium/Cooperative Review Board.
- b. *Convert/Conversion*: for a Condominium, the registering or recording of condominium documents at the Middlesex South District Registry of Deeds pursuant to G.L. Chapter 183A ; and for a Cooperative, the filing of housing cooperative Articles of organization with the Secretary of the Commonwealth pursuant to G.L. Chapter 157B.
- c. *Condominium*: a residential condominium created pursuant to Chapter 183A in which there may or may not be some nonresidential units.
- d. *Condominium Unit*: for purposes of this Article, a residential unit within a Condominium.
- e. *Cooperative*: a housing cooperative created pursuant to Chapter 157B in which there may or may not be some nonresidential units.
- f. *Cooperative Unit*: for purposes of this Article, a residential unit within a Cooperative.
- g. *Elderly Tenant*:. A tenant or tenant household in which at least one member is at least sixty (60)* years of age as of the date of receipt of the notice required under this Article.
*to be consistent with Somerville Housing Authority's definition of elderly
- h. *Handicapped Tenant*: A Tenant or Tenant household in which at least one member is handicapped, physically and/or mentally, as of the date of receipt of the notice required under this Article. A "handicap" shall include any disability that substantially limits one or more major life activities such as the performance of manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. The term "handicap" does not include the illegal use of controlled substances.
- i. *Housing Accommodation(s)*: A building or buildings, structure or structures, or unit or part thereof, attached or detached, including Condominium and Cooperative buildings and/or units, rented or offered for rent for living or dwelling purposes within the City of Somerville. However, that the following shall not be contained within the definition of "Housing Accommodation" for the purpose of this Article:

- (i) housing accommodations owned or operated by the United States, the Commonwealth of Massachusetts, the City of Somerville, the Somerville Housing Authority (except that Section 8 project-based units and units which utilize a Section 8 mobile voucher shall not be considered as housing accommodations operated by the Somerville Housing Authority), the Somerville Redevelopment Authority, the Somerville Affordable Housing Trust Fund, or any other authority created by any of the foregoing;
 - (ii) housing accommodations in a hospital, convent, monastery, asylum, public institution, or college or school dormitory operated exclusively for charitable or educational purposes, or in any nursing or rest home for the aged;
 - (iii) housing accommodations in hotels, motels, inns, tourist homes, and other such accommodations occupied by transient guests;
 - (iv) housing accommodations converted to a limited equity housing Condominium or Cooperative dedicated through restrictions recorded with the Middlesex South District Registry of Deeds to providing housing to persons of low and moderate income for a period of no less than thirty (30) years;
- j. *Landlord:* the entity or individual who holds title to any housing accommodation in any manner, including, but not limited to, a partnership, corporation, or trust. Any duty of a landlord under this Article shall extend to anyone who manages any housing accommodation, controls any housing accommodation, or customarily accepts rent on behalf of the landlord of any housing accommodation.
- k. *Low/Moderate Income Tenant:* a Tenant who is a person or group of persons residing in the same Housing Accommodation so long as the total income for all such persons for the twelve months immediately preceding the date of the notice required under this Article, calculated in accordance with Department of Housing and Urban Development (HUD) regulations at 24 CFR 5.601-5.609, is at or below eighty percent (80%) of the Boston Area Median Income as published annually by HUD.
- l. *Notice:* the written notice informing a Tenant of such Tenant's rights under Section 7-67 herein.
- m. *Owner:* shall have the same meaning as *Landlord* above.
- n. *Rental Agreement:* an agreement, verbal, written, or implied, between Landlord and Tenant, for use or occupancy of a Housing Accommodation.

o. *Tenant:* the person(s) entitled under the terms of a Rental Agreement to occupy a Housing Accommodation residing in the Housing Accommodation at the time Notice is given or should have been given pursuant to Section 7-67 herein.

7-65. Applicability.

This Article shall apply to all Housing Accommodations in the City of Somerville.

7-66. Conversion Permit.

(a) *Single Permit:* Subsequent to the effective date of this Article, the Conversion Permit shall be a single permit covering all of the Condominium Units in a Condominium and all of the Cooperative Units in a Cooperative.

(b) *When Landlord Must Obtain Conversion Permits:* The Conversion of a Housing Accommodation to a Condominium or a Cooperative does not, in and of itself, require a Conversion Permit. However, the Landlord must obtain a Conversion Permit prior to selling the first Condominium Unit or leasing (by proprietary lease) the first Cooperative Unit.

(c) *Permit Fee:* The Conversion Permit Application shall list all units in a Condominium or Cooperative and shall characterize each unit as (i) a Condominium Unit; (ii) a Cooperative Unit; or (iii) a unit which is not a Housing Accommodation as defined in this Article. The fee for a Conversion Permit shall be \$750.00 multiplied by the number of Condominium or Cooperative Units listed in the Application. Any Unit for which a Removal Permit or Certificate of Exemption was previously obtained under Ordinance 1985-9 shall be excluded from the fee calculation.

(d) *Documents Required for Conversion Permit Hearing:* The following documents ("Documents" or "Document" individually) must be submitted to the Board prior to the scheduling of any hearing: (1) a Condominium Conversion Application; (2) a copy of the Notice given to each Tenant as required by Section 7-67 below; (3) an Affidavit in the form supplied by the Board that the Landlord has not raised rents by more than 10% or attempted to terminate the tenancy of any Tenant except for nonpayment of rent or other just cause unrelated to the Landlord's desire to gain possession of the Housing Accommodation for purposes of Condominium/Cooperative Conversion; (4) a Certificate of Occupancy (or Temporary Certificate of Occupancy) and a Certificate of Inspection from the Inspectional Services Department; (5) a copy of a final paid water/sewer bill; a municipal lien balance worksheet showing that taxes are current; (6) a photograph of the property; and (7) copies of filed/recorded Condominium or Cooperative documents.

(e) *Standards for Granting/Denying a Conversion Permit:* A Conversion Permit shall be granted where (1) all Documents required under Section (d) above have been submitted; and (2) the Board has made a determination that such Documents are true and

correct in every material respect based on (i) the Board's evaluation of the information before it, if any doubt has been raised as to a Document's veracity; or (ii) the fact that there is no conflicting information before the Board which would cause the Board to reasonably question a Document's veracity. A Conversion Permit shall be denied where (1) one or more Documents required under Section (d) have not been submitted; and/or (2) the Board has made a determination that one or more Documents is false in any material respect. The Board may, in its discretion, continue a hearing to obtain further information as to the veracity of a Document if unable to make a determination based on the information before it. The Board may act on information from parties with actual knowledge relevant to a case, including tenants, third parties, and Board Members themselves.

(f) *Lapse:* A Conversion Permit shall lapse if the Condominium or Cooperative Unit for which the Permit has been granted has not been sold for within four (4) years after the date of the granting of the Permit, and the Landlord must thereupon reapply for a new Conversion Permit subject to the then current provisions of this Ordinance. If a Tenant challenges the bona fides of a sale but for which the Permit would have lapsed, the Board shall request copies of the purchase and sale agreement, recorded deed, HUD settlement, and documentation as to the identity of the purchaser and shall make a determination as to whether (i) the transaction is a bona fide sale to a third party purchaser for fair market value, in which case the Permit shall not lapse; or (ii) the transaction is not a bona fide sale, in which case the Permit shall lapse.

7-67. Tenants' Rights.

(a) *Right to Notice/When Given:* Each Tenant shall be entitled to Notice of the Landlord's Conversion or intent to Convert. The Notice shall include a summary of the Tenant's rights set forth in (b)-(g) below. The Board shall create a form of Notice, which shall be used by the Landlord to fulfill this obligation. Notice may be given either before or after a Conversion. If a building is sold in bulk to a new owner, the new owner shall not be required to give a new Notice, but rather, the prior owner's Notice shall carry over to the new owner. If a Tenant to whom Notice was given vacates the Housing Accommodation and a new tenant moves in, the Landlord shall not be required to give a new Notice to the new tenant, but the Landlord shall include a provision in the new tenant's rental agreement that Notice has been given pursuant to this Ordinance, stating the expiration date of the Notice period, and informing the new tenant that he or she may be required to vacate such tenant's Housing Accommodation at the expiration of the Notice period if the Housing Accommodation has been sold to a third party.

(b) *Right to Continued Occupancy:*

(1) A Tenant who is not an Elderly, Handicapped, or Low/Moderate Income Tenant shall have the right to continued occupancy of such Tenant's Housing Accommodation until (i) one year after receipt of Notice if such Tenant's Housing Accommodation has fewer than four residential units and two years after receipt of

Notice if such Tenant's Housing Accommodation has four or more residential units; or (ii) the expiration date of the Tenant's Rental Agreement, whichever is longer.

(2) An Elderly, Handicapped, or Low/Moderate Income Tenant shall have the right to continued occupancy until (i) two years after receipt of Notice if such Tenant's Housing Accommodation has fewer than four residential units and four years after receipt of Notice if such Tenant's Housing Accommodation has four or more residential units; or (ii) the expiration date of such Tenant's Rental Agreement, whichever is longer.

(c) *Right to Extend Term of Rental Agreement.* If the Notice period referred to in (b) above exceeds the term of the tenancy in the Rental Agreement, the term of the tenancy shall be extended to coincide with the expiration of the Notice period. There shall be no other changes in the provisions of the Rental Agreement, except that the Landlord may increase the rent at the original expiration date of the Rental Agreement and annually thereafter, not to exceed the lesser of 10% or the increase in the CPI-U for the Boston Metropolitan Area for the preceding twelve-month period. The Landlord shall also be permitted to recover pro-rata increases in real estate taxes authorized under a valid tax escalation clause in the Tenant's Rental Agreement.

(d) *Tenant's Right to Nondisturbance/Landlord's Right of Access:* For so long as the Tenant has the right to occupy under (b) above, the Landlord shall not undertake rehabilitation, repair, or improvement of the Housing Accommodation occupied by the Tenant except for ordinary and necessary repairs, nor shall the Landlord interfere with the Tenant's quiet use and enjoyment of common areas by creating unreasonable noise or disruption of such areas. The Tenant shall not unreasonably withhold consent to the Landlord or the Landlord's designees to enter the Tenant's unit in order to inspect the premises or show the unit to prospective purchasers or their contractors, provided the Landlord gives the Tenant at least two days' advance notice and requests entry only at reasonable times.

(e) *Right to Terminate:* Following receipt of Notice, a Tenant shall have the right to terminate the Rental Agreement, without penalty or other termination charge, upon written notice to the Landlord given thirty days in advance, on or before the day of the month on which rent is due and payable.

(f) *Right to Purchase:*

(1) Initial right of purchase: The Tenant shall have the right to purchase the Housing Accommodation in which the Tenant resides on terms and conditions which are substantially the same as, or more favorable than, those which the Landlord extends to the public, provided the Tenant executes a mutually agreeable form of purchase and sale agreement within ninety (90) days after the Tenant's receipt of such form of agreement from the Landlord.

(2) Second right of purchase: Where a Tenant has not exercised the initial right to Purchase, the Landlord shall give written notice to such Tenant of any bona fide offer to purchase such Tenant's Housing Accommodation that the Landlord is willing to accept from a third party . Said notice shall include a proposed purchase and sale agreement stating the terms and conditions of said offer, and shall state that the Tenant has a right to purchase the Tenant's Housing Accommodation if the Tenant meets or exceeds the terms and conditions of the third party offer. Failure of the Tenant to execute the purchase and sale agreement with the Landlord within fourteen days of receipt of said notice shall terminate all rights of purchase by the Tenant. At the request of the Landlord, the City, or on the Tenant's own initiative, the Tenant may voluntarily waive in writing this second right of purchase. The Landlord need not comply with the terms of this Section if the bona fide third party offer meets or exceeds the purchase price offered to the Tenant under the initial right to purchase.

(3) The conveyance for value of a Condominium Unit to a purchaser for value or proprietary lease of a Cooperative Unit for value to a proprietary lessee where neither the purchaser nor the proprietary lessee has knowledge of any violation of this section shall extinguish the Tenant's right to purchase under (1) and (2) above, but shall not affect the right of the City to take action against the Landlord for violation of this section.

(g) *Right to Relocation Benefits:* Relocation benefits for actual, documented moving expenses shall be paid to a Tenant who does not purchase such Tenant's Housing Accommodation or another Housing Accommodation in the same Condominium or Cooperative. The Landlord shall pay to an Elderly, Handicapped, or Low/Moderate Income Tenant a relocation benefit of up to four thousand dollars (\$4,000.00) or two months rent, whichever is greater. All other Tenants shall be entitled to a relocation benefit of up to two thousand dollars (\$2,000.00) or one month's rent, whichever is greater. The relocation benefit shall be paid no later than fourteen days after the Tenant provides to the Landlord invoices, receipts, and/or other reasonable documentation of such moving expenses. Notwithstanding the foregoing, no Tenant shall be eligible for a relocation benefit unless (i) all rent due and payable under the Rental Agreement or extension of such Rental Agreement, if any, has been paid by the Tenant prior to the date on which the Housing Accommodation is vacated, and (ii) the Tenant voluntarily vacates the Housing Accommodation for which recovery of possession is sought on or before the expiration of the notice period.

(h) *Right to Assistance in Finding Comparable Housing:* An Elderly, Handicapped, or Low/Moderate Income Tenant shall be entitled to assistance from the Landlord in finding comparable housing in Somerville renting for a sum equal to or less than the sum which such tenant had been paying for the for the Housing Accommodation which the Tenant occupied at the time of receipt of the Notice required herein. The Landlord's failure to find such comparable housing shall extend the period of notice for up to two additional years.

(g) *Method of Giving Notice:* Notice given pursuant to this section shall be personally given to a Tenant by at least one of the following methods: in hand, in the

presence of a witness; by certified or registered mail, first class, postage prepaid; by service by a constable; by FedEx or other recognized mail service with evidence of a signature indicating receipt, or by any other method, including e-mail or facsimile transmission where there is clear and convincing evidence that the Notice was actually received by the Tenant.

7.68. Evictions.

(a) *Right to Defense in an Eviction:* Except in the case of nonpayment of rent or other material violation of a Tenant's Rental Agreement, no Tenant shall be evicted in connection with or in anticipation of a Condominium or Cooperative Conversion, unless a Conversion Permit has been granted covering the Housing Accommodation in which the Tenant resides and the Tenant's right to continued occupancy under §7-67(b) has expired, as evidenced by a Certificate to that effect issued by the Board.

(b) *Presumptions:* There shall be a rebuttable presumption that an eviction is sought in connection with or in anticipation of a Condominium or Cooperative Conversion if a Housing Accommodation is or has been under agreement for sale to a buyer who converts the Housing Accommodation to a Condominium or Cooperative within six months of the date of purchase; or if there has been an unreasonable increase in rent or an unreasonable number of terminations of tenancies during the twelve-month period immediately prior to the filing of the summary process action

7-68. Condominium Review Board.

(a) *Terms of Office/Composition of Board:* The Board shall consist of five members, who shall all be City of Somerville residents. Board members shall serve staggered terms of three (3) years each. The five member Board shall include two homeowners, two tenants, and one Elderly, Handicapped, or Low/Moderate income person, who may be either a homeowner or a tenant.

(b) *Vacancies/Removal/Compensation:* The Mayor shall appoint the members of the Board, subject to confirmation by the Board of Aldermen. Vacancies on the Board shall be filled for the balance of any unexpired term. Failure to reside in Somerville will automatically terminate membership on the Board. A Board Member may be removed by the appointing authority prior to the expiration of such Board Member's term for good cause shown. Members of the board shall receive such annual compensation as the Board of Aldermen shall approve.

(c) *Powers and Duties:* The Board shall have the duty to enforce the provisions of this Ordinance and shall be responsible for promulgating such policies and procedures as it may deem advisable in furtherance of its purposes. The Board may adopt Rules and Regulations by majority vote, in which case, they shall be forwarded to the City Clerk, who shall in turn promptly forward them to the Board of Aldermen. Without limiting the generality of the foregoing, the Board shall be responsible for developing an application

form, conducting hearings, and granting or denying Conversion Permits. The Board shall be responsible for ensuring that application forms are available to the public in electronic and paper form.

(d) *Special Municipal Employees:* The Board Members shall be deemed special municipal employees for purposes of G.L. c. 268A.

7-69. Enforcement/Judicial Review.

(a) A Landlord who violates this Ordinance, including the making of any false statement in connection with a Conversion Permit Application, shall be punished by a fine of not more than one thousand dollars (\$1000.00) or imprisonment for up to sixty days. Each unit converted in violation of this Ordinance shall constitute a separate offense.

(b) A Tenant shall have the right to bring a civil action against a Landlord for violation of this Ordinance for a period of up to two years after the violation is alleged to have occurred. If the Tenant prevails, the Tenant shall be entitled damages of up to three months' rent plus reasonable attorney's fees; provided however, that if the court should determine that the action is frivolous, the Tenant shall be responsible for payment of the Landlord's reasonable attorney's fees.

(c) Any party aggrieved by an action of the Board may seek judicial review. Unless otherwise provided under the Massachusetts General Laws, the Somerville District Court shall have jurisdiction over violations of this Ordinance, except that that the Superior Court in Cambridge shall have jurisdiction over any complaints for injunctive relief.

Effective Date of Act : _____